
IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2005
No. 1281

THOMAS GRAY WEBB,

Appellant

v.

MONTGOMERY COUNTY, MARYLAND,

Appellee

On Appeal from the Circuit Court for Montgomery County, Maryland
(D. Warren Donohue, Judge)

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

This appeal arises from the denial of a motion for reconsideration filed by Thomas G. Webb and Mary E. Webb after the circuit court denied the Webbs' request for right of first refusal to repurchase property. (Apx. 14, 41)¹ The original condemnation action had been filed in 1994 and ended in a consent judgment in 1996. (Apx. 12, 15-23) The terms of the settlement included payment of \$800,000 to the Webbs along with a life estate that allowed them to maintain their residence on the property. The payment was deferred over a ten-year period at the Webbs' request. (Apx. 16) Almost nine years after the fee simple title to the property vested in the County, the Webbs exercised their right to draw the principal and filed a satisfaction of judgment. (Apx. 13, 27-28) Three months later, the Webbs filed a request for a right of first refusal to repurchase the property. (Apx. 13)

The County filed a motion to strike or to deny the request, because no right of first refusal existed—the Webbs had waived any further claim when they accepted payment and transferred fee simple title to the County, and no right of first refusal was negotiated or included in the settlement agreement. Moreover, the request was untimely in relation to the entry of judgment in 1996. (Apx. 13, 15-16) The circuit court ruled in the County's favor, acknowledging the contractual nature of the right of first refusal and the untimely request to repurchase the property. (Apx. 14, 40-41) The Webbs filed a motion for reconsideration, which the court denied. (Apx. 14) This appeal followed.

¹Despite an exchange of letters, Mr. Webb neglected to include the entire transcript of the May 26 hearing or the documents requested by the County. As a result, these items appear in the appendix to this brief.

QUESTION PRESENTED

Did the circuit court properly deny the request for right of first refusal and the motion for reconsideration where the condemnation action had concluded almost nine years earlier by entry of a consent judgment?

STATUTES, ORDINANCES, AND CONSTITUTIONAL PROVISIONS

The full text of all relevant statutes, ordinances, and constitutional provisions appears in the appendix to this brief.

STATEMENT OF ADDITIONAL FACTS

The statement of facts in the Webbs' brief invokes a sentimental journey through Mr. Webb's life and his coming to the property. For this Court to consider the appeal, a more precise description of the facts and the context of the County's exercise of its condemnation authority must follow.

When the land formerly owned by the Webbs was acquired by the County, it was part of the County's Ten-Year Comprehensive Solid Waste Plan. The property appeared as part of the Site 2 landfill for bypass, non-processible solid waste and waste-to-energy incinerator ash for waste, and the site continues to be a component of the current plan. (Apx. 31) In other words, the Site 2 landfill would handle the disposal of waste that could not be incinerated as well as the disposal of the ash from the incineration process. (Apx. 30) As the condemnation proceedings dragged on, the County decided to provide temporarily for the disposal of these materials at an out-of-county facility. (Apx. 30) Recognizing that out-of-county facilities may prove unreliable if a jurisdiction determines to shut its borders to

non-jurisdictional waste, the County determined that the Site 2 landfill would serve as the County's back-up location for the disposal of solid waste, and included it in the plan:

The principal components of the County's solid waste management system include: (1) the Transfer Station; (2) the RRF; (3) the MRF; (4) the Yard Trim Composting Facility; (5) the out-of-County landfill; (6) the Site 2 in-county property purchased for potential future landfill use; (7) the waste transportation system; and, (8) the solid waste reduction, reuse and recycling programs. In addition, the County is responsible for the management of the closed Oaks and Gude Landfill.

(Apx. 31)

The County initiated the original case as a condemnation action to obtain the Webbs' property for future construction of a landfill in accordance with the Ten-Year Plan mandated by the State. (Apx. 29-31) The County had adopted the plan after public hearing and with the approval of the Maryland Department of the Environment. Upon adoption, the County must adhere to the provisions of the plan. Shortly after the taking, economic conditions delayed the construction of that landfill, because out-of-state waste disposal became feasible. (Apx. 30) The County has not declared the property to be surplus to its needs, but has continued to reserve the property for the designated use as a landfill in the event that economic conditions or changes in the law render out-of-County waste disposal infeasible.

The Webbs were represented by counsel during the protracted litigation that preceded settlement negotiations. After significant discovery and motions, the parties agreed to the terms and conditions reflected in the Amended Judgment and Inquisition, which was signed and filed with the consent of the parties on April 8, 1996. (Apx. 15-23) The entry of judgment resolved the issue of public purpose for the acquisition and established the fair

market value of the property as \$800,000. At the Webbs' request, the County established an interest-bearing account into which the \$800,000 judgment was deposited. (Apx. 25-26) The Webbs had the right to be paid the interest each year over the ensuing 10 years (and they were paid the annual interest) and, upon proper notice, they could draw the principal at any time. (Apx. 16-18)

In November 2004, the Webbs exercised their right to draw the principal and to be paid in full, and the County complied with that request. On December 14, 2004, the Webbs filed a satisfaction of judgment certifying that the judgment had been satisfied and paid in full. (Apx. 13, 27-28) Since judgment was entered, the Webbs have availed themselves continuously of the right to occupy the property under the life estates granted by the consent judgment without compensation to the County. In fact, the judgment entered in 1996 reflected the Webbs' agreement to the proposed settlement and the absence of any reservation of a right of first refusal or repurchase:

The amount of Eight Hundred Thousand Dollars (\$800,000) is in settlement of any and all claims related to, or arising out of the captioned condemnation and all claims of any nature whatsoever, on the part of defendants against plaintiff, including, but not limited to, claims by reason of any entry upon, right of entry upon, presence upon, contractual claims, or any other claim of any nature related to the property . . . or use of, or presence upon such property by plaintiff, its employees, agents, contractors or invitees.

(Apx. 15-16) Upon execution and entry of the amended judgment and inquisition in 1996, fee simple title to the property vested in the County. In return, the Webbs received monetary compensation and a limited life estate in a portion of the property as long as they used it as their legal and actual primary residence. (Apx. 17) On April 18, 1996, the County filed a

certificate of payment reflecting that the judgment in favor of the Webbs had been paid in accordance with the terms of the judgment and inquisition. (Apx. 25-26)

ARGUMENT

This case has very little to do with condemnation and more to do with whether a case can be revived long after judgment is entered and satisfied. The Webbs seek to revisit issues decided many years ago in a condemnation action, despite the final resolution of all claims in 1996 and the consent judgment that curtailed any further assertion of property rights.

Obviously, the Webbs loved and enjoyed their land. Because they are not alone in their sentiment, condemnation actions are pursued neither often nor frivolously, but only after careful consideration by both the executive and legislative branches of government. Indeed, the settlement of the underlying condemnation case reflects the sensitivity that the government had to the Webbs' feelings—the County agreed with their request that they be compensated for their property over a period of time and also that they be allowed to live on the land they cherished for the remainder of their lives. What the Webbs did not ask for and what did not form part of their agreement was a right of first refusal if the County delayed the project.

The circuit court properly denied the request for right of first refusal and the motion for reconsideration where the condemnation action had concluded almost nine years earlier by entry of a consent judgment.

The power of eminent domain derives from the State. In Maryland, the State Constitution specifies that no property may be taken for public use without just compensation:

The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation.

Md. Const., art. III, § 40. The State shares its authority with local governments and certain agencies through legislative enactments. Montgomery County derives its condemnation powers from the State. *See* Md. Ann. Code art. 25A, § 5(B) (2005) (grant to charter counties). The sole criterion for exercising condemnation authority is that the acquisition serves a public purpose.

Under State law, all counties must have a Ten-Year Comprehensive Solid Waste Management Plan for the handling and management of solid waste generated in the County. Md. Code Ann., Env't § 9-503(a)(3) (1996). The Ten-Year Plan is adopted only after public hearing and is subject to approval by the Maryland Department of the Environment. *Id.* at § 9-503(d). Once adopted, the Ten-Year Plan must be followed. *Id.* at § 9-507(a) and (e) and § 9-511. The County's acquisition of the Webbs' property served the goals of the Ten-Year Plan and serves the duty owed to its residents by ensuring a mechanism for the disposal of waste that is economically responsible. The continuing inclusion of Site 2 in the Ten-Year Plan reflects that the County has neither abandoned its proposed project, nor declared the site to be surplus to its needs.

The public purpose for the condemnation and payment of just compensation, preclude pursuit of any further claims.

Under fundamental constitutional principles, “the power of eminent domain adheres to sovereignty and requires no constitutional authority for its existence.” *Lore v. Board of*

Public Works, 277 Md. 356, 358, 354 A.2d 812, 814 (1976) (citation omitted). The Maryland Constitution reflects the mandate of the Fifth and Fourteenth Amendments to the United States Constitution that a taking of private property be for a public use and that just compensation be paid. Md. Const. art. III, § 40. The right to exercise eminent domain is limited by the requirement that private property be taken “for public use” or “public purpose” as opposed to a private use. See *Zografos v. Mayor and City Council of Baltimore*, 165 Md. App. 80, 94, 884 A.2d 770 (2005) (citing *J. L. Matthews, Inc. v. Maryland-National Capital Park & Planning Commission*, 368 Md. 71, 87, 792 A.2d 288, 297 (2002)). Occasionally, an additional requirement may be imposed by statute or the eminent domain statute may limit the power bestowed on a condemning authority by providing that there be a necessity for the taking. *J. L. Matthews, Inc.*, 368 Md. at 87-88, 92 A.2d at 297. The County’s condemnation power does not include a statutory requirement that the property taken be “necessary” or “required,” but only that it serves “public purposes for the county. . . .” Md. Ann. Code, art. 25A § 5(B).

The determination of whether a proposed condemnation meets the constitutional requirement of a public purpose remains a judicial decision, rather than one for the jury to decide. *Utilities, Inc. v. Washington Suburban Sanitary Commission*, 362 Md. 37, 48, 763 A.2d 129, 135 (2000); *Master Royalties Corp. v. Mayor and Council of Baltimore*, 235 Md. 74, 95-96, 200 A.2d 652, 664 (1964). The court often defers to the decision of the condemning authority that an acquisition serves a public purpose:

When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings—no less than debates over the wisdom of other kinds of socioeconomic legislation—are not to be carried out in the . . . courts.

County Commissioners of Frederick County v. Schrodel, 320 Md. 202, 217, 577 A.2d 39, 47 (1990) (quoting *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 242-43 (1984)); *see also Green v. High Ridge Association*, 346 Md. 65, 73, 695 A.2d 125, 128-29 (1997).

In most instances, the government has the right to condemn property for its stated purpose. For example, the government may do so for an industrial park where “in the judgment of the State Legislature and the County officials, [it will] provide employment opportunities as well as general economic benefit for the residents of Prince George’s County.” *Prince George’s County v. Collington Crossroads, Inc.*, 275 Md. 171, 190, 339 A.2d 278, 288 (1975). Similarly, where the construction of an expressway would be completed in the distant future and would inflict hardships upon many individuals, the Court upheld the condemnation action and characterized those problems as legislative, not judicial. *See State Roads Commission v. Franklin*, 201 Md. 549, 561, 95 A.2d 99, 105 (1953). Likewise, great deference was extended to the Washington Suburban Sanitary Commission’s decision to condemn an easement for construction of a sewer line, even though it could have constructed the sewer line in the roadway with equal efficiency. *Washington Suburban Sanitary Commission v. Santorios*, 234 Md. 342, 346, 199 A.2d 206, 208 (1964).

In the present case, the County established a public purpose under the Ten-Year Plan that the State required it to formulate and to carry out. The entry of the judgment and

inquisition reflected a determination that a public use for the acquisition existed and that just compensation would be paid. Moreover, the judgment and inquisition evidenced the parties' agreement to the terms of the settlement. Constitutional principles of due process and equal protection required nothing more than that a public purpose exist and that just compensation be paid for the property.

No automatic right of first refusal arises from this condemnation.

Although the Webbs characterize the delay in use of the property as an abandonment of the project for the Site 2 landfill, this case does not fall within the provisions of the Transportation Article, which applies to the disposition of property once the local government has abandoned a road project or otherwise determined that the property is surplus to its needs and seeks to dispose of it. *See* Md. Code Ann., Transp. § 8-309 (2001). The acquisition was not for a road and the project has neither been abandoned nor has any portion of the acquisition been declared to be surplus.

For the Webbs to retain a right of first refusal after conveying their property either voluntarily or involuntarily to the County, they would have had to include a specific provision in the judgment and inquisition. *See Park Station Limited Partnership v. Bosse*, 378 Md. 122, 137, 835 A.2d 646, 655 (2003) (right of first refusal created by contract and treated as personal right that is not transferable or assignable). At this late date, when the full compensation negotiated in 1996 has been paid and the Webbs continue to enjoy a life estate in the property, they cannot unilaterally seek to create a new benefit.

The title acquired in a condemnation action is “absolute or fee-simple title.” Md. Code Ann., Real Prop. § 12-108(b) (2003). “A fee simple estate is . . . defined to be an absolute title or estate in lands wholly unqualified by any reversion, reservation, condition or limitation or possibility of any such thing.” *New Cathedral Cemetery v. Browning*, 153 Md. 408, 413, 138 A. 258, 260 (1927). “[W]hen property is condemned in good faith for [a] named public purpose, the necessary . . . duration of the estate taken is ordinarily left to the sound business discretion of the condemnor, and if after a reasonable and bona fide use of a fee simple estate taken for the named public purpose, the land is no longer needed or desired for use for that particular purpose, the condemnor is at liberty to deal with the real estate in any legitimate manner that he sees fit, and neither the condemnee nor those claiming under him may object.” *Shreve v. Baltimore*, 243 Md. 613, 622, 222 A.2d 59, 64 (1966).

Similarly, the judiciary will not second-guess a delay in use of the property acquired by a local government. For example, in *County Commissioners of Frederick County v. Schrodell*, the Court of Appeals rejected a property owner's attempt to stay a condemnation action until Frederick County could obtain the requisite permits for its proposed landfill. The owners hoped that the County would not be able to obtain the permits and render the condemnation unnecessary. The Court reminded the Schrodells that the burden was on them to show that the condemnation was "so oppressive, arbitrary or unreasonable as to suggest bad faith." 320 Md. at 217, 577 A.2d at 47. If the Court were to delay the condemnation until permits were obtained, "[t]he judiciary will be exceeding its proper role under this Court's decisions." *Id.* at 218, 577 A.2d at 47.

Since the entry of the judgment and inquisition in 1996, the Webbs enjoyed the continued use of their property through the life estates that they retained. In addition, they received regular payments of the interest on the compensation for their property. (Apx. 16) Only after they accepted the principal and entered a judgment of satisfaction did the Webbs seek to repurchase the property. By that time, not only had the ability to renegotiate the terms of the acquisition expired, but the Webbs had received the full monetary benefits of the judgment and inquisition.

CONCLUSION

In a condemnation action, the issue before the court ordinarily concerns whether the condemning authority showed a public purpose for acquiring private property. Once a public purpose exists, the only issue involves a calculation of just compensation. In this case, the settlement between the parties based on negotiation with advice of counsel for the County and the Webbs resolved these issues, making no further consideration necessary. Once the parties agreed to the compensation and terms of the conveyance, the Webbs transferred fee simple title to the County and kept only a life estate in the property. No right of first refusal was reserved in the judgment and none exists by operation of statute. The circuit court decision denying the request for a right of first refusal and denying the motion for reconsideration should be affirmed by this Court.

Respectfully submitted,

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APPENDIX

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Maryland Constitution, Art. III, § 40. Eminent Domain.

The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation.

Excerpts from Maryland Annotated Code

Art. 25A, § 5. Enumeration.

The following enumerated express powers are granted to and conferred upon any county or counties which hereafter form a charter under the provisions of Article XI-A of the Constitution, that is to say:

* * *

(B) County Property and Franchises

To provide for the protection of the county property; to provide for the acquisition by purchase, lease, or otherwise, and condemnation of property required for public purposes in the county; to dispose of any real or leasehold property belonging to the county, provided the same is no longer needed for public use; to provide for the financing of any housing or housing project in whole or in part, including the placement of a deed of trust, mortgage, or other instrument upon the property to ensure repayment of funds used to purchase, construct, rehabilitate, or otherwise develop the housing project; to grant any franchise or right to use the same, or any right or franchise in relation to any highway, street, road, lanes, alley or bridge; to grant one or more exclusive or nonexclusive franchises for a community antenna system or other cable television system that utilizes any public right-of-way, highway, street, road, lane, alley, or bridge, to impose franchise fees, and to establish rates, rules, and regulations for franchises granted; and to provide for the leasing as lessor to the State or any political subdivision or other agency thereof, or to any county agency, or to any person, any property belonging to the county or any agency thereof, in furtherance of the public purposes of such county or agency, upon such terms and compensation as said county may deem proper, and after such disposition, grant or lease shall have been advertised once a week for three successive weeks in one or more newspapers of general circulation published in said county, stating the terms thereof and the compensation to be received therefor, and giving opportunity for objections thereto. Provided, however, that easements for public utilities may be granted without advertisement.

* * *

Environment Article

§ 9-503. County plans - Required; review by governing body of county; revision or amendment.

(a) *Requirement.* Each county shall have a county plan or a plan with adjoining counties that:

- (1) Is approved by the Department;
- (2) Covers at least the 10-year period next following adoption by the county governing body; and
- (3) Deals with:
 - (i) Water supply systems;
 - (ii) Sewerage systems;
 - (iii) Solid waste disposal systems;
 - (iv) Solid waste acceptance facilities; and
 - (v) The systematic collection and disposal of solid waste, including litter.

(b) *Review by governing body of county.* Except as provided in § 9-515 of this subtitle, each county governing body shall review its county plan at least once every 3 years in accordance with a schedule set by the Department.

(c) *Revision or amendment.* Each county governing body shall adopt and submit to the Department a revision or amendment to its county plan if:

- (1) The governing body considers a revision or amendment necessary; or
- (2) The Department requires a revision or amendment.

(d) *Public hearing prior to adoption.*

(1) Before a county governing body adopts any revision or amendment to its county plan or adopts a new county plan, the governing body shall:

- (i) Conduct a public hearing on the county plan, revision, or amendment that may be conducted jointly with other public hearings or meetings; and
- (ii) Give the principal elected official of each municipal corporation that is affected notice of the county plan, revision, or amendment at least 14 days before the hearing.

(2) (i) Notice of the time and place of the public hearing, together with a summary of the plan, revision, or amendment, shall be published in at least 1 newspaper of general circulation in the county once each week for 2 successive weeks, with the first publication of notice appearing at least 14 days before the hearing.

(ii) Notice of the public hearing may be a part of the general notice listing all other items to be considered during the public hearing or meeting.

* * *

§ 9-507. Same - Approval by Department; use of county plans after approval by county governing body.

(a) *Powers of Department and Secretary.* When a county governing body submits its proposed county plan or a proposed revision or amendment of its county plan to the Department, the Department may:

- (1) Approve the proposal;
- (2) Disapprove the proposal;
- (3) If the part approved includes all of the required elements of a county plan, approve the proposal in part and disapprove it in part; or
- (4) Modify or take other appropriate action on the proposal.

(b) *Required consultation by Department.* Before the Department approves or disapproves, in whole or in part, a proposed county plan or a proposed revision or amendment of a county plan, the Department shall submit the proposal:

- (1) To the Department of Natural Resources for advice on natural resources matters;
- (2) To the Department of Planning for advice on the consistency of the proposal with the local master plan and other appropriate matters; and
- (3) To the Department of Agriculture for advice on the impact of water and sewerage service and solid waste facilities on productive or potentially productive agricultural land.

(c) *Review period.*

- (1) Except as otherwise provided in this subsection, the Department shall approve, disapprove, or partially approve and partially disapprove each proposed county plan or proposed revision or amendment to a county plan within 90 days after the proposal is submitted to the Department.
- (2) For good cause and after notice to the county involved, the Department may extend the 90-day review period of paragraph (1) of this subsection for an additional 90 days.

(d) *Failure of Department to act within review period.* If the Department does not disapprove, in whole or in part, a proposed county plan or a proposed revision or amendment of a county plan within the review period provided in subsection (c) of this section, the proposal is approved.

(e) *Effect of county plans after adoption by county governing body.*

- (1) Before the Department takes any action under subsection (a) of this section, a county may use its proposed county plan or proposed revision or amendment of its county plan at the county's own risk, if the county governing body has adopted the proposed county plan, revision, or amendment.
- (2) After the county governing body adopts the proposed county plan, a person shall follow the provisions of that plan except to the extent that the Department modifies or disapproves that plan.

§ 9-511. Conformance to county plans required - In general.

Unless they conform to the county plan or revision or amendment of the county plan, the following systems and facilities may not be installed or extended:

- (1) A water supply system;
- (2) A sewerage system;
- (3) A solid waste disposal system; and
- (4) A solid waste acceptance facility.

Real Property Article

§ 12-108. Payment of judgment and costs; title acquired.

(a) *Payment of judgment and costs.* On payment of the judgment and costs by the plaintiff pursuant to the provisions of Title 12, Chapter 200 of the Maryland Rules, the plaintiff immediately shall become vested with the title, estate, or interest of the defendant in the condemned property.

(b) *Title acquired.* The title acquired in a condemnation proceeding shall be an absolute or fee-simple title including the right, title, and interest of each of the defendants in the proceeding whose property has been condemned unless a different title is specified in the inquisition.

* * *

Transportation Article

§ 8-309. Sale of land not needed for public purposes.

(a) *Purpose of section.* The purpose of this section is to return unneeded land to the tax rolls of the counties and to make this land available for use by a county or municipality for any transportation purpose.

(b) General requirement for disposition of land.

- (1) Notwithstanding any other statute to the contrary, if land acquired under this subtitle is not needed for present or future State, county, or municipal transportation purpose or other public purposes, the Administration shall dispose of the land as soon as practicable after the completion or abandonment of the project for which the land was acquired.
- (2) (i) If the land is from a project that was abandoned, and the Secretary determines that the property is no longer needed for any State transportation purpose, a county or municipality may acquire the land for a transportation purpose, with the approval of the Secretary, on payment of an amount equal to the lesser of:
 1. The appraised value of the land; or
 2. The consideration that the Administration or Commission originally paid for the land, plus simple interest at the fair

market rate calculated from the time of acquisition to the time of disposition and administrative costs.

- (ii) If the land is not needed for a county or municipal transportation purpose, the person from whom the land was acquired or the successor in interest of that person has the right to reacquire the land, on payment of an amount equal to the lesser of:
 - 1. The appraised value of the land; or
 - 2. The consideration that the Administration or Commission originally paid for the land, plus simple interest at the fair market value calculated from the time of acquisition to the time of disposition and administrative costs.
- (iii) If neither of these rights is exercised, the land shall be disposed of under this section in the same manner as if the land were from a project that has been completed or otherwise as permitted by this section.

(c) *Completed project - Reacquisition of land.*

- (1) (i) As to land from a completed project:
 - 1. The Administration shall notify the person from whom the land was acquired, or the successor in interest of that person, within 30 days after making a determination that the land is not needed by the Administration and that the land is available for reacquisition;
 - 2. Within 5 years from the date the land was acquired, the person from whom the land was acquired, or the successor in interest of that person, may reacquire the land, on payment of an amount equal to the consideration that the Administration or Commission originally paid for the property; and
 - 3. After 5 years from the date the land was acquired, the person from whom the land was acquired, or the successor in interest of that person, has the right to reacquire the land at the current market value.
 - (ii) If the right to reacquire the land as provided in subparagraph (i) of this paragraph is not exercised within 8 months after the Administration provides the notice that the land is available, the Administration shall sell the land at public auction as provided in this subsection.
- (2) Before the sale:
 - (i) The Administration shall appraise the land; and
 - (ii) If the Administration believes that the land has a value of more than \$25,000, the land also shall be appraised by at least one independent, qualified real estate appraiser.
 - (3) The Administration shall notify the public of the sale by:

- (i) Posting a notice of the sale on the land at least 2 weeks before the sale; and
 - (ii) Publishing the notice for 2 consecutive weeks in a newspaper that is published or has general circulation in the county in which the property is located.
- (4) The notice of the sale shall:
- (i) Describe generally the property to be sold;
 - (ii) State the date, time, and place of the sale; and
 - (iii) Contain any other information that the Administration considers proper.
- (5) The sale shall be held on or near the land and may be conducted by Administration personnel.
- (6) At the conclusion of the sale, the Administration's representative in charge of the sale shall announce publicly the name of the highest bidder and the amount of the bid. If the highest bid does not approximate the appraised value of the land, the representative may reject all bids and cancel the sale.
- (7) The results of the sale shall be recorded and, if the highest bid was accepted by the Administration's representative, presented to the Administrator for approval or rejection. If the Administrator approves the sale, the Administrator may execute a deed conveying the land to the buyer.
- (8) If there is no bidder for the land, if all bids are rejected and the sale canceled as provided in paragraph (6) of this subsection, or if the Administrator considers all bids inadequate, the land shall be reoffered for sale within 6 months on the same terms and in the same manner as the original sale.
- (9) At the second sale, if there is no bidder for the land, if all bids are rejected and the sale canceled as provided in paragraph (6) of this subsection, or if the Administrator considers all bids inadequate, the Administrator may negotiate a sale of the land. If the Board of Public Works approves the negotiated sale and the deed, the Administrator may execute a deed conveying the land to the buyer.
- (d) *Same - Nondevelopable land.* As to any land from a completed project, if the Administration considers the land to be too small or otherwise unsuitable for private use or development, the Administration shall establish a plan of disposal for that land. If the Board of Public Works approves the plan and the deed, the Administrator may execute a deed conveying the land under the plan.
- (e) *Conveyance - Abandoned or completed project land.*
- (1) Notwithstanding any other provision of this section, the Administration may convey land from an abandoned or completed transportation project by exchanging the land for privately or publicly owned land of substantially equal value when the land to be acquired by the exchange is needed for a current

State highway purpose that has been identified within the current consolidated transportation program as approved by the General Assembly, or has otherwise received prior legislative approval for planning.

- (2) In the case of an abandoned or completed project, the person from whom the land was acquired, or the successor in interest of that person, shall have the first right of refusal to reacquire the land, except that the offer and acceptance shall be as follows:
 - (i) The Administration shall notify the person from whom the land was acquired, or the successor in interest of that person, in writing, by certified mail, return receipt requested of the proposed exchange and the value of the property;
 - (ii) Within 90 days from the date of the notice, the person from whom the land was acquired, or the successor in interest of that person, shall notify the Administration in writing of its intent to exercise its right to reacquire the land; and
 - (iii) Within 90 days from the date of notifying the Administration of its intent to reacquire the land, the person from whom the land was acquired, or the successor in interest of that person, must tender payment of an amount equal to the lesser of:
 1. The appraised value of the land; or
 2. The consideration that the Administration or Commission originally paid for the land, plus simple interest at the fair market rate calculated from the time of acquisition to the time of disposition and administrative costs.
- (3) The person from whom the land was acquired, or the successor in interest of that person, is deemed to have waived its right of first refusal if the person or the successor in interest fails to follow the procedures set forth in paragraph (2) of this subsection.
- (4) In the case of a completed project or an abandoned project for which the right of first refusal was waived, the procedure for the exchange shall be as follows:
 - (i) If the exchange is not one proposed by a county or municipality, the Administration shall:
 1. Notify by registered mail any affected county or municipality of the offer for an exchange of a parcel;
 2. Allow 60 days after notification for any affected county or municipality to make a request to acquire the parcel or part of the parcel located within the borders of the county or municipality and for the Administration to consider any such request; and
 3. If any affected county or municipality makes an offer to acquire the parcel, or part thereof within that jurisdiction's borders, that

is equal to or greater than, or includes land of an equal or greater value than, the appraised value of the parcel or applicable portion thereof, the Administration shall accept that offer;

- (ii) Before making an exchange under this subsection, the exchange must be approved by the Board of Public Works; and
 - (iii) If the Administrator and the Board of Public Works approved the terms and conditions of the exchange and all deeds, the Administrator may execute and accept deeds effecting the conveyances necessary to complete the exchange.
- (5) Before the exchange:
- (i) The Administration shall appraise all parcels of land to be exchanged; and
 - (ii) If the Administration believes that any parcel of land in the exchange has a value of more than \$25,000, the parcels of land also shall be appraised by at least one independent, qualified real estate appraiser.
- (6) In the event that the properties to be exchanged are determined to be of unequal value, the Administrator may agree to accept or pay an amount necessary to substantially equalize the value of land conveyed by the State.
- (7) The owner of land exchanged under this subsection is not entitled to first right of refusal if the exchanged land is later offered for sale by the State.
- (f) *Conveyance to adjacent property owner.*
- (1) Except as required by this section for property from an abandoned project, this section does not prevent the Administration from conveying any of its surplus land to an adjacent property owner:
 - (i) As all or part of the consideration for a right-of-way transaction; or
 - (ii) If the Administration believes that public auction of the surplus land will affect adversely the value or use of the surplus land, on a negotiated sale with a price based on the appraised value of the land.
 - (2) If the Administration believes that any land proposed for sale under this subsection has a value of more than \$25,000, the land shall be appraised by at least one independent, qualified real estate appraiser.
 - (3) If the Board of Public Works approves the sale and the deed, the Administrator may execute a deed conveying the land to the adjacent property owner.
- (g) *Disposition to other public agencies.* Except as required by this section for property from an abandoned project, this section does not prevent the Administration, with the approval of the Board of Public Works, from conveying any of its surplus land to any State or local agency that:
- (1) Needs the property for a public purpose; and
 - (2) Pays the Administration an amount equal to the lesser of:
 - (i) The appraised value of the land; or

- (ii) The consideration that the Administration or Commission originally paid for the land, plus simple interest at the fair market rate calculated from the time of acquisition to the time of disposition and administrative costs.
- (h) *First rights of refusal; exercise of right to lease back property.*
 - (1) If the land is not to be used for any other public purpose by a State or local agency, the person from whom unimproved land was acquired shall have the first right of refusal to lease back the property at the fair market rent established by the acquiring agency.
 - (2)
 - (i) The person from whom an owner-occupied residential property was acquired shall have the first right of refusal to lease back the property at the fair market rent established by the acquiring agency.
 - (ii) On the exercise of the right to lease back the property, the period of eligibility for an additional payment as authorized under § 12-202 of the Real Property Article shall be calculated as provided in § 12-203 (1) of the Real Property Article.
- (i) *Conveyance of surplus land to promote economic development; rights of former owner, county or municipal corporation.*
 - (1)
 - (i) In this subsection, "former owner" means only that person from whom the State acquired the land or who executed the instrument conveying the land to the State.
 - (ii) "Former owner" includes a decedent's:
 - 1. Surviving spouse, as defined in § 1-202 of the Estates and Trusts Article; and
 - 2. Child, as defined in § 1-205 of the Estates and Trusts Article.
 - (2) Notwithstanding any other law to the contrary, the Administration may, after giving notice to the Maryland Department of Planning and with the approval of the Board of Public Works, convey any of its surplus land if the conveyance will promote economic development in the State of Maryland.
 - (3) Prior to conveying land in accordance with paragraph (2) of this subsection, the Administration shall notify the former owner of that person's right to reacquire the land.
 - (4) Within 45 days after the notice to the former owner by the Administration that the land is not needed and is available for reacquisition, the former owner may notify the Administration of its intent to exercise the right to reacquire the land in accordance with this subsection.
 - (5) Within 45 days of the notice to the county or municipal corporation by the Administration that the land is not needed and is available for purchase, the county or municipal corporation in which the property is located may notify the Administration of its interest in purchasing the land.
 - (6) The right of a former owner to reacquire land under this subsection:

- (i) Is not assignable and may be transferred only as a result of the death of a former owner;
 - (ii) Is null and void unless the person or persons exercising the right tender the required payment within 60 days of the approval of the sale by the Board of Public Works to that person or persons; and
 - (iii) Shall take precedence over the right of the county or municipal corporation to acquire the land in the event both the former owner and the county or municipal corporation notify the Administration of their intent to purchase.
- (7)
- (i) The Administration may negotiate the sale of land to be conveyed under this section.
 - (ii) In determining the consideration to be paid for the land, the Administration shall consider:
 - 1. The appraised value of the land; and
 - 2. The economic benefits to the State of the proposed development of the property.
 - (iii) The consideration may include payment in cash or exchange of privately or publicly owned land.
- (8) The notification and disposition provisions contained in this section do not apply to a conveyance made under this subsection.
- (9) Land conveyed under this subsection shall be subject to local zoning laws.